IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE
Criminal Writ Petition No.1020 of 2007

The National Stock Exchange Ltd.
and ors. Petitioners

Vs.

M/s.Elegant Industries Pvt.Ltd.
and ors. Respondents

Mr.Shirish Gupte, Sr.Counsel with Mr.Subodh Desai for petitioners.

Mr.Ashok Wanwari with Mrs.Rita Panjwani for resp.no.1.

Mr.D.R.More, APP for State.

CORAM: B.H.MARLAPALLE, J.

July 19, 2007.

P.C.

. Heard Mr.Gupte, the learned Senior Counsel with Mr.Desai for the petitioner. The petitioners have filed this petition challenging the order of process passed by the learned Metropolitan Magistrate on 13th February 2007 in new Criminal Case No.2900031/SW/2007 (Old No.194/Misc./2004). It is submitted by Mr.Gupte, initially the learned Magistrate passed an order under Section 202 of Cr.P.C. and called for the police report. The Police Inspector from Worli Police Station, Mumbai

submitted his report on 1/4/2006 and pointed out that the substantial dispute between the parties was of civil nature arising out the premises owned by the complainant and in possession of the petitioner no.1. It is also submitted by him that the petitioner no.1 has filed Civil Suit No.2097 of 2003 on the Original Side of this Court whereas the original complainant filed a suit for eviction in the Small Causes Court and in the said suit the plaintiff has also prayed for compensation on account of causing damages to the premises which admeasure about 5320 sq.ft. Mr.Gupte, therefore, urged that the learned Metropolitan Magistrate did not apply his mind and in fact did not take into consideration the report submitted under Section 202 of Cr.P.C. before the process was issued.

. This Court has consistently held that the order of process at the first instance ought to be challenged by filing revision application under Section 397 of Cr.P.C. and the inherent powers under Section 482 of Cr.P.C. need not be invoked unless such equally efficacious remedy was exhausted by the accused.

. The petition is, therefore, disposed off with liberty to the petitioners to approach the revision Court i.e. the Sessions Court at Mumbai by filing a revision application under Section 397 of Cr.P.C. and the ad-interim order passed by this Court will continue to operate for a period of four weeks from today. In addition it is directed that the period of pendency of this petition shall be taken into consideration if there is an issue of delay in filing the revision application.

(B.H.MARL